

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Petitions for Waiver of Universal Service)	WC Docket No. 08-71
Filing Deadlines)	

PETITION FOR WAIVER OF 47 C.F.R. §54.307(c)

Cordova Wireless Communications, LLC (Cordova), pursuant to Section 1.3 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”),¹ hereby requests a waiver of Section 54.307(c) of the Commission’s Universal Service Fund (“USF”) Rules.² Specifically, Cordova requests a waiver of the September 30, 2013 deadline for filing high-cost line count data used to calculate universal service support for competitive eligible telecommunications carriers (“CETCs”) with the Universal Service Administrative Company (“USAC”). For the reasons discussed below, grant of the requested waiver is in the public interest and consistent with FCC precedent concerning “day late” line count filings.

1. BACKGROUND AND INTRODUCTION

Cordova is a CETC, designated by the Regulatory Commission of Alaska (“RCA”)³, that receives support from the High Cost and Low Income Programs of the federal Universal Service Fund (“USF”). Cordova provides wireless telecommunications service in a rural Alaska service

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 54.307(c).

³ RCA Docket U-06-59, Order No. 2 (September 15, 2006)

area that is both remote and extremely challenging to serve. Cordova's service area contains mountains, water and islands that make its facilities difficult to reach even in the optimal summer months of the year and next to impossible during the harsh Alaskan winter. The service Cordova provides is essential to those who live, work and travel through Cordova's service territory and the E911 access it provides is vital to the lives and safety of the many hikers, fishermen and others who rely on wireless service as a lifeline to potential assistance in emergencies. Due to the remote locations of these individuals and severe weather, the availability of E911 service equates literally to a matter of life and death.

Pursuant to 47 CFR § 54.307(b), CETCs are to provide certain line count information to the Administrator, or the Universal Service Administrative Company (USAC), in order to receive universal service support. According to § 54.307(c), CETCs are to supply these line counts on a quarterly basis per a specific schedule.⁴ In addition, upon adoption of certain reforms in the Commission's *ICC/USF Transformation Order*⁵, only CETCs who serve specific areas in the state of Alaska are required, after January 1, 2012, to submit the line counts required in 54.307. The FCC Form used to submit the data required by 54.307 to USAC is Form 525.

Early on October 1, 2013⁶, Cordova determined that it had not submitted the required quarterly Form 525 to USAC by the due date, September 30, 2013. Cordova recognizes that these rules are in place to ensure that the Commission and USAC are able to collect and distribute universal service funds and that USAC must process a significant number of forms each quarter. Cordova is committed to meeting these filing deadlines and had previously taken steps to ensure that its line count reports were timely filed, prior to the instant inadvertent

⁴ For purposes of this petition, the relevant filing date is contained in 54.307(c)(2): *No later than September 30th of each year, [a CETC is required to] submit data as of March 31st of the existing calendar year.*

⁵ Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, et al., (FCC 11-161, rel. November 18, 2011) at 529

⁶ October 1, 2013 is also the day the federal government effectively shut down, including a majority of the functions of the Commission.

oversight, in an attempt to prevent a missed filing. Cordova's system included monthly reminders of up-coming filings and working in conjunction with its consultant in order to have multiple personnel involved in making timely filings. Unfortunately, a series of unusual circumstances occurred where *all* personnel involved with the late filing at issue were out of town in the days preceding, during and after the Form filing deadline. First, the Cordova employee responsible for gathering the data necessary to populate the Form 525 was out of the office due to illness the day of the filing. Second, the CEO / General Manager of Cordova was also out of town on business several days prior to the filing date as well as the day of and after the filing. Third, the consulting manager in charge of oversight of this filing was out of town on vacation during the week of this filing. As a result of these unusual key employee circumstances, Cordova's Form 525 was not filed on or before September 30, 2013, as required by the Commission's Rules.

Cordova, upon learning of the missed Form 525 filing deadline, promptly filed the Form 525 required, which contains line count data as of March 31, 2013. In fact, the filing was made the morning of October 1, 2013, making the Form 525 less than one business day late. As a result of the missed filing deadline, Cordova has revised its internal procedures to ensure compliance with all universal service filing deadlines. Cordova will continue to prepare its line count filings in advance of the deadlines and will continue to file electronically. Cordova will also task additional staff with ensuring that filing deadlines are met. Cordova will also generate internal electronic reminders for its filing staff as well as personal calendar alerts for the additional staff that work on high-cost filings.

2. DISCUSSION

Under Section 1.3 of its Rules, the Commission may waive any provision of its rules if good cause is shown.⁷ For years, the Commission has exercised its discretion to waive its line count rules where the particular facts make strict compliance inconsistent with the public interest.⁸ The FCC has consistently granted requests for waiver ranging between one and fourteen days after the filing deadline, determining that good cause existed to waive the applicable line count sections of the Commission's Rules.⁹ Specifically, the FCC has granted "day late" requests for waiver when the company takes measures to ensure that such errors do not occur in the future.¹⁰ Because of Cordova's error, its filing was one day late and, as noted above, Cordova has already taken action to make sure this mistake does not occur in the future. In addition, it has been established that the Commission may waive rules where particular facts make strict compliance inconsistent with the public interest,¹¹ and if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹² The

⁷ 47 C.F.R. § 1.3.

⁸ See, e.g., *Smith Bagley, Inc.*, 16 FCC Rcd 15275, 15276 (2001); *Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commissions Rules*, Order, CC Docket No. 96-45, 21 FCC Rcd 10155, 10157 (2006) ("Verizon Waiver Order"); *Xfone USA, Inc. Petition for Waiver of Sections 54.307(c) and 54.802(a) of the Commission's Rules*, Order, WC Docket No. 08-71, 24 FCC Rcd 4813 (2009); *AT&T Communications of NY & AT&T Communications of California Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order CC Docket No. 96-45, FCC Rcd 953 (2007); and *NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order, CC Docket No. 96-45, 22 FCC Rcd 560 (2007).

⁹ See, e.g., *in re Petitions for Waiver of the Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, DA 10-107 (January 22, 2010) at ¶¶ 21-22, *Northern New England Telephone Operations LLC and Telephone Operating Company of Vermont LLC Petition for Waiver of Sections 54.802(a) and 54.809(c) of the Commission's Rules* ("Fairpoint Waiver"), *Midcontinent Communications Petition for Waiver of Section 54.307(c) of the Commission's Rules* ("Midcontinent Waiver"), *General Communications, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules* ("GCI Waiver"), and *Hopi Telecommunications, Inc. (SAC #452173) Petition for Waiver of Section 54.314(d)(1) Filing Deadline for Submission of Annual Section 254(e) Certification by Tribal and Other Carriers Not Subject to State Jurisdiction* ("Hopi Waiver").

¹⁰ *GCI Waiver* at ¶ 20.

¹¹ *Cellular Telephone Co. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990)

¹² *Id.*, at 1166

Commission may also take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹³

A. Cordova Submitted the Filing within Hours of the Filing Deadline

As stated above, and as demonstrated in Exhibit A provided herein, Cordova submitted the September 30, 2013 Form 525 to USAC on the morning of October 1, 2013. The Commission has routinely granted petitions to waive quarterly filing deadlines where the ETC has inadvertently missed the deadline by a matter of days. In addressing waiver petitions filed by four ETCs in 2011, the Commission stated “[F]or the reasons noted below, which include promptly filing the required data or certification...we find...that good cause warrants waiver of the Commission’s rules.”¹⁴ The Commission further stated a waiver was warranted since the petitioner “made the required filing[s] between one and seven business days after the deadline[s] and missed the deadline[s] for the first time.”¹⁵ In Cordova’s case, the Form 525 filing was made less than one business after the due date, placing Cordova’s circumstances squarely within those for which the Commission has previously granted waivers.

In addition, Cordova, which has been an ETC since September 15, 2006, has never previously missed a Form 525 filing deadline. As explained further below, however, the missed September 30, 2013 Form 525 filing deadline has caused Cordova to review and revise its internal processes in order to provide the greatest assurance possible that future filing deadlines will not be missed.

¹³ *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C.Cir. 1969)

¹⁴ Various *Petitions for Waiver of Universal Service High-Cost Filing Deadlines*, Order, WC Docket No. 08-71 and CC Docket No. 96-45 (DA 11-1337, rel. August 2, 2011) at 1

¹⁵ *Id.*, at 12

B. Cordova has Implemented Internal Procedures to Ensure Future Compliance.

The Commission has also looked favorably upon requests for waivers of filing deadlines where an ETC has taken steps to eliminate future data submission deadline errors.¹⁶ Due to unforeseen and heretofore inexistent circumstances, Cordova did not file its third quarter 2013 Form 525, which contains line count data as of March 31, 2013, on or before September 30, 2013. These circumstances included the absence due to illness of a key Cordova employee responsible for generating the required line count data, and the lack of communication between Cordova and Cordova's consultant, who performs the Form 525 filings on the Company's behalf, of this absence. In addition, as previously stated, the General Manager of Cordova Telephone and the manager of Cordova's consultant were all absent the days preceding, as well as the day of and after, the filing. As a result, Cordova did not discover the missed deadline until early on the morning of October 1, 2013.

Cordova has implemented revisions to internal processes to provide the greatest assurance possible that future Form 525 deadlines will not be missed. These revisions include, but are not limited to, having two additional employees (3 in total) who are now responsible for tracking all filing deadlines as well as trained in the procedures necessary to make the filings should the primary employee be absent. In addition, the added employees will track the deadlines in their calendar with established reminders three days prior to the deadline. This will provide an additional level of redundancy that did not exist before. In addition, Cordova's consultant has implemented two automated systems that will alert the consultant and Cordova of

¹⁶*Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order, CC Docket No. 96-45 (*Verizon Order*) at 10; *AT&T Communications of NY & AT&T Communications of California Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order (*AT&T Order*) at 9; *NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order at 9

impending Form 525, and other, filing deadlines. The first is a project tracking software allowing deadlines to be tracked simultaneously by all personnel involved in the filing. The second is integrating filing deadlines into a Microsoft Outlook calendar so that pending deadline notifications can be made to responsible personnel via their wireless phone when traveling.

By taking the steps discussed above, Cordova has met the requirement adopted by the Commission in ruling on other waiver requests; namely, that “carriers must comply with their commitments to revise their internal procedures to ensure that their filings will be accurately and timely received.”¹⁷ Cordova has already implemented the internal process revisions discussed above and hereby commits to ensure, to the greatest extent possible, that future Form 525 filings will be accurate and timely.

3. GRANTING THE REQUESTED WAIVER IS IN THE PUBLIC INTEREST AND OTHERWISE MEETS SECTION 1.3 REQUIREMENTS.

Cordova, upon learning of the missed September 30, 2013 Form 525 filing deadline, promptly (within a matter of hours) filed its third quarter Form 525 with USAC. The consequences of this heretofore one-time event, however, are severe. According to USAC, Cordova will have to forego universal service support for the entire first quarter of 2014, which is estimated to be \$911,000. Pursuant to Section 1.3 of the Commission’s rules, waivers of the Commission rules may be granted if good cause is shown. In implementing this standard, the Commission may take into consideration, among other things, hardship and/or equity. Cordova submits that depriving a company of over \$900 thousand of universal service support constitutes a highly inequitable consequence of missing a filing deadline by mere hours, and thus the

¹⁷ See e.g., *F&B Communications, Inc. f/k/a Farmers’ and Business Men’s Telephone Company Petition for Waiver of Section 54.802(a) of the FCC’s Rules*, Order, WC Docket No. 08-71 and CC Docket No. 96-45 (DA 11-560, rel. March 29, 2011) at 8

Commission is well within its authority to waive strict compliance with 47 CFR § 54.307(c) in this instance. When considering similar commitments to ensure compliance, the Commission has previously found that “strict enforcement of the filing deadline would disproportionately penalize [the ETC] when considered in light of its actions to remedy its error.”¹⁸

It is also demonstrably in the public interest to grant Cordova’s waiver. Cordova serves an extremely high cost area in the state of Alaska, and provides vital wireless services to its customers, including access to emergency services. Cordova has made substantial capital expenditures in the past and is fully committed to providing its customers vital quality wireless services at reasonable rates where wireless service has been lacking and even nonexistent. Granting of this waiver will prevent Cordova, and its customers, from being adversely affected. Without the universal service support scheduled to be distributed to Cordova in the first quarter of 2014, Cordova will have to severely curtail operations and may have to suspend operations entirely until support is reinstated. The FCC has waived its universal service rules where enforcement of the filing deadline may jeopardize the provision of service and delay system construction and upgrades.¹⁹ The support at risk, approximately \$911,000, represents 21% of Cordova’s operating revenues. The absence of this support cannot be reasonably absorbed by Cordova’s operations and other revenue sources. The universal service support being provided, and that has been provided in the past, to Cordova has allowed it to expand its wireless network to provide customers with reliable, affordable wireless service. The Commission has acknowledged that where quarterly line count data have been filed only days late and corrective measures have been implemented, denying the waiver would “undermine [at ETC’s] investments

¹⁸ *AT&T Order* at 6.

¹⁹ *See in re Federal-State Joint Board on Universal Service, Alliance Communications Cooperative, Inc. and Hills Telephone Company, Inc., East Ascension Telephone Company, LLC, Columbus Telephone Company, Petitions for Waiver of Section 54.301 Local Switching Support Data Submission Report Date*, CC Docket No. 96-45, DA 05-3024 ¶ 8 (November 22, 2005) (“*Alliance Order*”).

in its network, and thus its ability to ensure that customers have and maintain access to adequate services.”²⁰ Thus, it is in the public interest - and in Cordova’s customers’ interest, to waive the application of 54.307(c) in this case and allow Cordova to receive the support scheduled to be distributed to it in the first quarter of 2014.

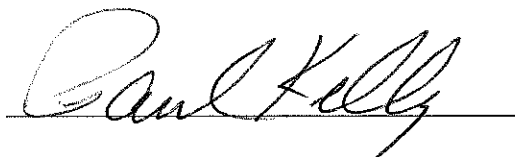
4. CONCLUSION

Granting Cordova’s request for a waiver of 47 CFR § 54.307(c) meets the standards for waiver found in section 1.3 of the Commission’s rules. Cordova, upon learning of the missed deadline for filing its third quarter 2013 Form 525, upon which its receipt of universal service support depends, made the required filing within hours of the deadline. Given USAC has already received, albeit one day late, the Company’s Form 525 filing, the lateness should not unduly hinder USAC’s administrative functions. Additionally, no other universal service recipients would be harmed by grant of Cordova’s request. Such recipients would receive essentially the same amount of support regardless of whether the FCC grants Cordova’s request due to the nominal nature of Cordova’s support in comparison to the overall size of the high cost universal service fund. Cordova has also implemented revisions to its internal procedures in order to ensure, to the greatest extent possible, future compliance with 54.307(c). Finally, withholding over \$900 thousand of universal service support is not an equitable consequence for missing a filing deadline by a matter of hours.

Cordova respectfully requests the Commission grant the request for waiver contained herein on an expedited basis, and direct the Administrator to distribute first quarter 2014 universal service support on schedule.

²⁰ *Verizon Order* at 8

Respectfully Submitted,

A handwritten signature in cursive script, reading "Paul Kelly", is written over a horizontal line.

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November 12, 2013

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To: [REDACTED]
Subject: Confirmation of Email Submission from HCFilings@usac.org



Thank you for your Submission to HCFilings@usac.org. Your email has been received and will be reviewed by an Analyst shortly.

We will respond to all inquiries within 24 hours of receipt. If you have more information or need to reach us sooner, please contact us at 888-641-8722.

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